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TITLE 326 AIR POLLUTION CONTROL BOARD

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## FIRST NOTICE OF COMMENT PERIOD

LSA Document #12-500

**DEVELOPMENT OF AMENDMENTS TO RULES CONCERNING AIR PERMITS AND THE PROTECTION OF AMBIENT AIR QUALITY STANDARDS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2](#) concerning requirements for the protection of air quality standards in construction permits. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 2-1.1-5](#); [326 IAC 2-5.1-3](#); [326 IAC 2-6.1-5](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

Rule section [326 IAC 2-1.1-5](#) contains provisions applicable to all air quality permitting rules, including requirements for the protection of ambient air quality standards. The general provisions at [326 IAC 2-1.1](#) provide a road map for specific air permitting requirements located in other rules in Article 2 for construction, operation, and modification of sources. Currently, the language at [326 IAC 2-1.1-5](#) prohibits IDEM from issuing a permit if the commissioner determines that the permit would allow a source to "cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS)". The current rule language could potentially be interpreted to include all operating permits and renewals. The Clean Air Act does not require that operating permits create new applicable emission limitations and instead contemplates that the applicable requirements already created in permits for new construction or construction modification are incorporated into the source operating permit. Also, federal rules at 40 CFR 51, Subpart I, apply specifically to review of new sources and modifications. The basis for the requirements in [326 IAC 2-1.1-5](#) are from IDEM's original air permit construction rules that were approved into Indiana's state implementation plan (SIP).

Before [326 IAC 2-1.1](#) (General Provisions), [326 IAC 2-5.1](#) (Construction of New Sources), [326 IAC 2-5.5](#) (Registrations), and [326 IAC 2-6.1](#) (Minor Source Operating Permit) were developed in 1998 (LSA Document #98-95, filed November 25, 1998) all construction and operating permit requirements were contained in [326 IAC 2-1](#), which has been repealed, but the federally approved version is still effective in Indiana's SIP (<http://www.epa.gov/region5/air/sips/index.html>). The basis for the air quality requirements in [326 IAC 2-1.1-5](#) is [326 IAC 2-1-3\(b\)](#) as it existed before its repeal in 1998. The provisions in [326 IAC 2-1-3\(b\)](#) limited issuance of construction permits to those that did not interfere with attainment or maintenance of ambient air quality standards. Repealed language in [326 IAC 2-1-5\(a\)](#) also provided for establishing emission limitations in construction and operating permits for the purpose of ensuring attainment and maintenance of ambient air quality standards.

IDEM is proposing to amend [326 IAC 2-1.1-5](#) to clarify that its applicability is limited to construction permits as was previously required in the repealed rules at [326 IAC 2-1](#). The original language at [326 IAC 2-1-3\(b\)](#) and its "mandatory" nature of demonstrating attainment and maintenance of ambient air quality standards only applied to construction permits. The proposed revisions will continue to reflect Clean Air Act permitting requirements and the federally approved SIP. IDEM is also proposing to remove similar language in [326 IAC 2-5.1-3\(e\)](#) (construction permits) and [326 IAC 2-6.1-5\(a\)](#) (minor source operating permits) that requires permits to include emission limitations to assure attainment and maintenance of ambient air quality standards because this language is not necessary since [326 IAC 2-1.1-5](#) applies throughout Article 2. IDEM is requesting comment on the proposed amendments and any other provisions of Title 326 that may be affected by this rulemaking.

**Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Amend [326 IAC 2](#) as necessary to address any ambiguity in [326 IAC 2-1.1-5](#) and associated sections that was unintentionally introduced with the 1998 rulemaking.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

**Alternative 2. Do not amend [326 IAC 2-1.1-5](#).**

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.

- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

#### **Applicable Federal Law**

Federal rules at 40 CFR 51, Subpart I govern review of new sources and modifications.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. There is no fiscal impact associated with this alternative.

Potential Fiscal Impact of Alternative 2. There is no fiscal impact associated with this alternative.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance (CTAP) program under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program, the monthly CTAP newsletter, and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), the Small Business Regulatory Coordinator for this rule is:

Jessica Faust-Hamblin  
IDEM Small Business Regulatory Coordinator  
MC 60-04 IGCS W041  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8172 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-5](#) is:

Eric P. Shields  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 234-3997  
[smallbizombudsman@iedc.in.gov](mailto:smallbizombudsman@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-5](#), specifically [IC 5-28-17-5\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brad Baughn  
IDEM Small Business Assistance Program Ombudsman  
MC 50-01 IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 234-3386 or (800) 451-6027  
[bbaughn@idem.in.gov](mailto:bbaughn@idem.in.gov)

#### **Public Participation and Workgroup Information**

At this time, no workgroup is planned for the rulemaking. If you feel that a workgroup or other informal discussion on the rule is appropriate, please contact Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality at (317) 233-5697 or (800) 451-6027 (in Indiana).

#### **STATUTORY AND REGULATORY REQUIREMENTS**

[IC 13-14-8-4](#) requires the board to consider the following factors in promulgating rules:

- (1) All existing physical conditions and the character of the area affected.
- (2) Past, present, and probable future uses of the area, including the character of the uses of surrounding areas.
- (3) Zoning classifications.
- (4) The nature of the existing air quality or existing water quality, as the case may be.
- (5) Technical feasibility, including the quality conditions that could reasonably be achieved through coordinated control of all factors affecting the quality.
- (6) Economic reasonableness of measuring or reducing any particular type of pollution.
- (7) The right of all persons to an environment sufficiently uncontaminated as not to be injurious to human, plant, animal, or aquatic life or to the reasonable enjoyment of life and property.

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #12-500 Air Permits and NAAQS  
Susan Bem Mail Code 61-50  
Rule and SIP Development Section  
Office of Air Quality  
Indiana Department of Environmental Management  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5967. Please confirm the timely receipt of faxed comments by calling the Rule and State Implementation Plan Development Section at (317) 234-6530.

- (3) By electronic mail to sbem@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the email address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the tenth floor reception desk, Office of Air Quality, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped no later than September 28, 2012.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Susan Bem, Rule and State Implementation Plan Development Section, Office of Air Quality, (317) 233-5697 or (800) 451-6027 (in Indiana).

Scott Deloney, Chief  
Air Programs Branch  
Office of Air Quality

*Posted: 08/29/2012 by Legislative Services Agency*

An [html](#) version of this document.